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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,652	11/13/2001	James E. Stoller	Y1.0044	6904

7590 12/22/2003

Mathew R.P. Perrone, Jr.  
210 South Main Street  
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EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/032,652

Applicant(s)

STOLLER, JAMES E.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-11 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-22 is/are allowed.
- 6) ☒ Claim(s) 1 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 3-5, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 1-11 and 18-20 in Paper No. 4 is acknowledged. The traversal is on the ground(s) that classification indicates and overlapping search and that the mere allegation that the material can be used in the banking of films is unsupported in the specification, other than the statement by the examiner. This is not found persuasive because examiner stated that the restriction was proper because group I and group II are distinct inventions. Group I is drawn to an apparatus and its structural features as a winter turf cover. Whereas, group II is drawn to a method of preventing crown hydration. Examiner would further like to point out that the inventions group I and group II are related as process and apparatus for its practice to further illustrate the distinct nature of group I and group II. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as packaging film, turf cover on the roof a building/sod house, or floral arrangement wrappers.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,127,293 to Kimura et al.

Regarding Claim 1, Kimura teaches a protective winter turf cover with at least one layered polyethylene sheet being substantially water impermeable; the layered polyethylene sheet having at least a first layer and a second layer; the first layer and the second layer each having a directional orientation determined by force striations; the direction orientation of the first layer being at an angle relative to the directional orientation of the second layer; and the turf cover being durable (Kimura et al Col. 1 lines 27-54). Kimura et al teaches a first layer having a first edge; the second layer having a second edge, the force striations being at an acute angle to the first edge; the force striations being at an acute angle to the second edge; and the acute angle of the first edge being at a relative angle to the acute angle of the second edge (Kimura Fig. 3 acute diagonal lines of top layer and the acute diagonal lines of bottom layer).

Regarding Claim 6, Kimura teaches applicant's broadly worded limitation that the at least one layered polyethylene sheet being at least a first layered polyethylene sheet and at least a second layered polyethylene sheet being secured with an adhesive in an edge to edge to form at least a part of the winter turf cover (Kimura et al Fig. 3 and Col. 1 line 57).

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Regarding Claim 7, Kimura et al teaches the adhesive forming a water tight barrier; and a foam layer being added to the winter turf cover (Kimura et al Col. 14 line 17).

Regarding Claims 8 and 9, Kimura et al teaches the first layered polyethylene sheet being between the foam layer and the second layered polyethylene sheet or the foam layer being between the first layered polyethylene sheet and the second layered polyethylene sheet (Kimura et al Col. 14 line 15-28).

#### ***Allowable Subject Matter***

Claims 3-5, 10, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18-22 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 9 October 2003 have been fully considered but they are not persuasive for the reasons stated above. In addition, examiner maintains that Rimura teaches a nonwoven turf cover. Rimura teaches a laminated (Rimura Col. 1 line 14, Fig. 3, and Col. 12 line 34) cover. Applicant hasn't even presented the 'nonwoven' feature as a structural claim limitation. Rimura teaches that the cover is 'substantially water impermeable' (Rimura Col. 14. line 65).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 3,864,198.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.



Andrea M. Valenti  
Examiner  
Art Unit.3643

12/8/03



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600